

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE ALYN BENSON,

Plaintiff,

v.

JOHN DOWBAK, et al.,

Defendants.

No. 2:21-cv-1650 WBS AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff's first amended complaint. ECF No. 35. Also before the court are plaintiff's motions for a court order requiring defendants to respond to the complaint and to compel discovery. ECF Nos. 36, 37.

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against "a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[] monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal
 2 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
 3 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
 4 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
 5 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
 6 Franklin, 745 F.2d at 1227-28 (citations omitted).

7 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
 8 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
 9 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
 10 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 11 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
 12 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,
 13 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
 14 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a
 15 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the
 16 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain
 17 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
 18 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
 19 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 21 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
 22 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
 23 content that allows the court to draw the reasonable inference that the defendant is liable for the
 24 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
 25 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
 26 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
 27 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
 28 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

1 II. First Amended Complaint

2 The first amended complaint names as defendants Gavin Newsom, Governor of
 3 California; Kathleen Allison, Secretary of the California Department of Corrections and
 4 Rehabilitation (CDCR); and Scott F. and Marcus Pollard, Wardens of Pleasant Valley State
 5 Prison (PVSP) and Richard J. Donovan Correctional Facility (RJD), respectively. ECF No. 35 at
 6 2. The complaint describes various conduct that plaintiff alleges violates his rights, including
 7 harassment by unidentified officers and prisoners, transfers, property loss and damage, unjust
 8 rules violations reports, and inadequate medical care. Id. at 4-25. The alleged conduct appears to
 9 have occurred at PVSP, RJD, Kern Valley State Prison (KVSP), and Folsom State Prison, with
 10 the majority of violations taking place at PVSP and RJD. Id.

11 III. Failure to State a Claim

12 “There is no respondeat superior liability under section 1983,” Taylor v List, 880 F.2d
 13 1040, 1045 (9th Cir. 1989) (citation omitted), and the complaint does not contain any facts
 14 showing that any of the named defendants were personally involved in any constitutional
 15 violations or were aware of them and failed to intervene. Instead, it appears that plaintiff has
 16 named these individuals based solely on their supervisory positions. This is not sufficient to state
 17 a claim for relief. See Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (supervisor can be
 18 liable for his personal involvement or if there is a sufficient causal connection between
 19 supervisor’s conduct and violation (quoting Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989))).

20 IV. Improper Joinder

21 The first amended complaint is also improper as it brings multiple, unrelated claims,
 22 against more than one defendant. If plaintiff chooses to amend the complaint, he is advised that
 23 he may only join multiple claims if they are all against a single defendant, Fed. R. Civ. P. 18(a),
 24 and he may only join defendants where the right to relief arises out of the same “transaction,
 25 occurrence, or series of transactions,” and “any question of law or fact common to all defendants
 26 will arise in the action,” Fed. R. Civ. P. 20(a)(2). In other words, joining more than one claim is
 27 only proper when it is against one defendant, and joining multiple defendants in one complaint is
 28 only proper when the claims against them are based on the same facts. Plaintiff must decide

1 which related claims and defendants he wants to pursue in this action, and any unrelated claims
2 involving different defendants must be brought in separate suits.

3 V. Leave to Amend

4 The first amended complaint does not state any cognizable claims for relief and plaintiff
5 will be given an opportunity to file an amended complaint. If plaintiff chooses to file a second
6 amended complaint, he must demonstrate how the conditions about which he complains resulted
7 in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also,
8 the complaint must allege in specific terms how each named defendant is involved. Arnold v.
9 Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42
10 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions
11 and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).
12 Furthermore, "[v]ague and conclusory allegations of official participation in civil rights violations
13 are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

14 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
15 his first amended complaint complete. Local Rule 220 requires that an amended complaint be
16 complete in itself without reference to any prior pleading. This is because, as a general rule, an
17 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
18 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
19 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
20 in subsequent amended complaint to preserve appeal). Once plaintiff files a second amended
21 complaint, any previous complaints no longer serve any function in the case. Therefore, in an
22 amended complaint, as in an original complaint, each claim and the involvement of each
23 defendant must be sufficiently alleged.

24 In the event plaintiff chooses to amend the complaint, he should keep the following
25 standards in mind.

26 The unauthorized deprivation of property by a prison official, whether intentional or
27 negligent, does not state a claim under § 1983 if the state provides an adequate post-deprivation
28 remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984). "California Law provides an adequate

1 post-deprivation remedy for any property deprivations.” Barnett v. Centoni, 31 F.3d 813, 816-17
 2 (9th Cir. 1994) (per curiam) (citing Cal. Gov’t Code §§ 810-895). Therefore, only an intentional
 3 and authorized deprivation of property may constitute an actionable § 1983 claim for violation of
 4 the Due Process Clause. An authorized deprivation is one carried out pursuant to established
 5 state procedures, regulations, or statutes. Piatt v. MacDougall, 773 F.2d 1032, 1036 (9th Cir.
 6 1985).

7 “Prison disciplinary proceedings are not part of a criminal prosecution, and the full
 8 panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418
 9 U.S. 539, 556 (1974) (citation omitted). Rather, with respect to prison disciplinary proceedings
 10 that include the loss of good-time credits, an inmate must receive (1) twenty-four-hour advanced
 11 written notice of the charges against him, id. at 563-64; (2) “a written statement by the factfinders
 12 as to the evidence relied on and reasons for the disciplinary action,” id. at 564 (internal quotation
 13 marks and citation omitted); (3) an opportunity to call witnesses and present documentary
 14 evidence where doing so “will not be unduly hazardous to institutional safety or correctional
 15 goals,” id. at 566; (4) assistance at the hearing if he is illiterate or if the matter is complex, id. at
 16 570; and (5) a sufficiently impartial fact finder, id. at 570-71. A finding of guilt must also be
 17 “supported by some evidence in the record.” Superintendent v. Hill, 472 U.S. 445, 454 (1985).

18 A prison official is not liable under the Eighth Amendment unless he “knows of and
 19 disregards an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 837
 20 (1994). He must then fail to take reasonable measures to lessen the substantial risk of serious
 21 harm. Id. at 847. Negligent failure to protect an inmate from harm is not actionable under
 22 § 1983. Id. at 835.

23 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
 24 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,
 25 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff
 26 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition
 27 could result in further significant injury or the unnecessary and wanton infliction of pain,’” and
 28 (2) “the defendant’s response to the need was deliberately indifferent.” Id. (some internal

quotation marks omitted) (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)).

VI. Motions for a Court Order and to Compel Discovery

Plaintiff has filed motions seeking an order requiring defendants to respond to the complaint and to compel discovery. ECF Nos. 36, 37. Because the first amended complaint does not state a claim for relief, the motion for an order requiring defendants to respond to the complaint will be denied. Since service has not yet been found proper for any defendant, the motion to compel is premature and will be denied.

VII. Plain Language Summary of this Order for a Pro Se Litigant

Your complaint will not be served because the facts you alleged are not enough to state a claim. You have not alleged any facts showing any conduct by the named defendants. The proper defendant for a § 1983 claim is the person who violated your rights or caused the violation to happen. Wardens and high-ranking state officials cannot be sued under § 1983 for things that correctional officers or other prison staff do. You may amend your complaint to try to fix these problems. Be sure to provide facts that show exactly what each defendant did to violate your rights or to cause a violation of your rights.

If you choose to file a second amended complaint, it must include all claims you want to bring. Once an amended complaint is filed, the court will not look at any information in any previous complaints. **Any claims and information not in the second amended complaint will not be considered.**

In accordance with the above, IT IS HEREBY ORDERED that:


1. Plaintiff's first amended complaint fails to state a claim upon which relief may be granted, see 28 U.S.C. § 1915A, and will not be served.
2. Within thirty days from the date of service of this order, plaintiff may file a second amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled "Second Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

1 3. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
2 form used in this district.

3 4. Plaintiff's motion for an order requiring a response to the complaint (ECF No. 36) is
4 DENIED.

5 5. Plaintiff's motion to compel discovery (ECF No. 37) is DENIED.

6 DATED: June 22, 2022

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8 ALLISON CLAIRE
9 UNITED STATES MAGISTRATE JUDGE
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